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CONSTITUTIONAL LAW: DENIAL BY STATE OF THE RIGHT OF FOREIGN CORPORATIONS TO DEFEND ACTIONS.—In the case of *Scott v. Day-Bristol Consolidated Mining Company,*[1] an action to quiet title was brought against a foreign corporation which claimed an interest in lands in the possession of and alleged to belong to the plaintiff. On motion the lower court struck out the corporation's demurrer on the ground that it had failed to file its articles and therefore under the provision of the Nevada statute could not defend the action. On appeal the case was reversed, the court holding that since the plaintiff had sued the defendant as a corporation, he waived any question of its capacity to defend. It is to be observed in view of this decision that the statute would seem to have little significance. If a plaintiff sues the corporation as such, he thereby waives any question of its capacity to defend; on the other hand, if he alleges in his complaint its incapacity, and brings the action against the persons deemed to hold the property as trustees, or against a receiver appointed for the purpose of the action, as was suggested by the court, clearly the latter could defend as the statute does not apply to such persons. In whatever manner the plaintiff proceeds, the right of defence, denied by the statute, still exists. Instead then of being a further check upon foreign corporations seeking to do business in the state without complying with the law, as was intended by the legislature, it really tends to place greater burdens on the person suing if he proceeds against a trustee or receiver appointed for the purpose of the suit.

From a constitutional standpoint the statute would seem to be valid.[2] It is fundamental that a corporation as such only exists in the state of its creation,[3] and that it cannot exercise the privileges conferred upon it by its charter in any other state without the latter's consent.[4] Consequently when a foreign corporation comes into a state to transact business, that state may prescribe such conditions or restrictions on its right to do business as may seem fit.[5] A foreign corporation is not entitled to "equal protection of the laws" until it has been lawfully admitted into the state,

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[1] (Nev., Aug. 4, 1914), 142 Pac. 625.

[2] Keystone Driller Co. v. Superior Court (1903), 138 Cal. 738, 72 Pac. 398.

[3] Bank of Augusta v. Earle (1839), 13 Peters (38 U. S.) 519, 588, 10 L. Ed. 274; Rece v. Newport News & M. V. Co. (1889), 32 W. Va. 164, 9 S. E. 212, 3 L. R. A. 572; Baltimore and Ohio R. R. Co. v. Glenn (1868), 28 Md. 287, 92 Am. Dec. 688.

[4] State v. Hammond Packing Co. (1903), 110 La. 180, 34 So. 368, 98 Am. St. Rep. 459; Ducat v. Chicago (1870), 10 Wall (77 U. S.) 410, 19 L. Ed. 972; Oliver v. Liverpool and London Life and Fire Ins. Co. (1868), 100 Mass. 531; State v. Phipps (1893), 50 Kans. 609, 31 Pac. 1097, 18 L. R. A. 657.

[5] Waters-Pierce Oil Co. v. Texas (1900), 177 U. S. 28, 44 L. Ed. 657, 20 Sup. Ct. Rep. 518; Hartford Fire Ins. Co. v. Raymond (1888), 70 Mich. 485, 38 N. W. 474; Connecticut Mutual Life Ins. Co. v. Spratley (1899), 172 U. S. 602, 43 L. Ed. 569, 19 Sup. Ct. Rep. 308.

because it is not a person "within the jurisdiction". Until it has complied with the laws prerequisite to its entry it therefore cannot claim the protection of this clause of the constitution.[6] Statutes denying foreign corporations, doing business in the state, the right to maintain actions unless they have done certain acts as required by law have been universally sustained.[7] It seems that the right to defend actions cannot be differentiated on principle from the right to sue and may likewise be denied to a corporation unlawfully doing business in the state. Both stand upon the same footing and are governed by the same principles. Until a foreign corporation has complied with the law and put itself in a position to demand the rights accorded to it, it cannot be heard to complain. The suggestion in the court's language that depriving a person of the right of defence would be taking property without due process, would only be applicable to corporations not doing business in the state or to those which have been expressly or impliedly recognized within its borders. Likewise conditions precedent to maintaining actions, and, on principle, to defending actions, cannot be constitutionally imposed on foreign corporations, where the cause of action arises in the course of interstate commerce.[8]

R. J. J.

CRIMINAL LAW: INTERSTATE EXTRADITION: FUGITIVE FROM JUSTICE.[1]—The sole source of the power of a state to extradite springs from article iv, section 2 of the federal constitution and sections 5278 and 5279 of the United States Revised Statutes. Judicial interpretation of these provisions makes clear that two facts must be established as a prerequisite to the exercise of the extradition power. First, a crime must be legally and substantially charged, and secondly, the person sought to be extradited must be a fugitive from justice.[2]

In cases of international extradition, evidence of criminality is required;[3] but our constitutional and congressional enactments as to interstate extradition exact proof of flight instead of evidence

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[6] State v. Hammond Packing Co. (1903), 110 La. 180, 34 So. 368, 98 Am. St. Rep. 459; Pembina Mining Co. v. Pennsylvania (1888), 125 U. S. 181, 31 L. Ed. 650, 8 Sup. Ct. Rep. 737; Philadelphia Fire Assoc. v. New York (1886), 119 U. S. 110, 30 L. Ed. 342, 7 Sup. Ct. Rep. 108; Merchants Natl. Bank v. Ford (1907), 124 Ky. 403, 99 S. W. 260.

[7] Union Cloak and Suit Co. v. Carpenter (1902), 102 Ill. App. 339; South Amboy Terra Cotta Co. v. Poerschke (1904), 45 Misc. 358, 90 N. Y. Supp. 333; Keystone Driller Co. v. Superior Court (1903), 138 Cal. 738, 72 Pac. 398.

[8] Sioux Remedy Co. v. Cope (Nov. 30, 1914), 235 U. S. 197, 35 Sup. Ct. Rep. 57.

[1] (1901), U. S. Comp. Stat. 3597.

[2] Roberts v. Reilly (1885), 116 U. S. 80, 29 L. Ed. 544, 6 Sup. Ct. Rep. 291.

[3] 19 Cyc. 58, note 28, subtitle, "Evidence of Criminality"; 22 U. S. St. at L. 25, 1901 U. S. Comp. Stat. 3593; Benson v. McMahon (1888), 127 U. S. 457, 32 L. Ed. 234, 8 Sup. Ct. Rep. 1240.